

UNITED STATES DISTRICT COURT
for the
District of New Jersey

ORIGINAL FILED
APR 16 2010
WILLIAM T. WALSH, CLERK

United States of America)
v.)
Robert J. Suclarato)
_____)
Defendant

Case No. 10-2018 (JS)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of 10/06/2006 in the county of Camden in the _____ District of New Jersey, the defendant violated 18 U. S. C. § 1343 and 2, an offense described as follows:

and 7 U.S.C. §§ 6.o(1), 13(a)(5), and 18 U.S.C. § 2.

See Attachment A

This criminal complaint is based on these facts:

See Attachment B

Continued on the attached sheet.

Patricia A. Diaz SA FBI
Complainant's signature

Patricia A. Diaz, Special Agent FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: 04/16/2010

Joel Schneider
Judge's signature

City and state: Camden, NJ

Hon. Joel Schneider
Printed name and title

CONTENTS APPROVED

UNITED STATES ATTORNEY

By: 
R. STEPHEN STIGALL, AUSA

Date: 4/16/10

Attachment A

COUNT 1

On or about October 10, 2006, in the District of New Jersey, and elsewhere, the defendant

ROBERT J. SUCARATO,

for the purpose of executing and attempting to execute a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly and willfully cause writings, signs, signals, pictures, and sounds to be transmitted by means of wire communications in interstate commerce through New Jersey, in that he caused \$600,000 to be wire transferred from Santa Barbara Bank located in California to Citibank.

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT 2

From at least as early as September 2004 through on or about August 1, 2007, in the District of New Jersey and elsewhere, the defendant,

ROBERT J. SUCARATO,

while acting as a commodity pool operator and being required to be registered with the Commodity Futures Trading Commission as a commodity pool operator, knowingly and wilfully employed a device, scheme or artifice to defraud pool participants and engaged in a transaction, practice, and course of business which operated as a fraud or deceit upon pool participants or prospective pool participants by (1) falsely representing to his investors that he was an experienced and successful trader; (2) making fraudulent representations that investor funds would be invested in commodity futures trading when such funds were not, in fact, invested in commodity futures trading and instead were being misappropriated; and (3) making false statements to investors regarding the profitable status of their investments.

In violation of Title 7, United States Code, Sections 6.o(1), 13(a)(5), and Title 18, United States Code, Section 2.

ATTACHMENT B

I, Patricia A. Diaz, (the "affiant"), state that I am a Special Agent with Federal Bureau of Investigation ("FBI"). I have personally participated in this investigation and am aware of the facts contained herein based upon my own investigation as well as information provided to me by other law enforcement officers. Since this Affidavit is submitted for the sole purpose of establishing probable cause to support issuance of a complaint, I have not necessarily included each and every fact known by the government concerning this investigation.

1. I have been employed as an FBI Special Agent since March 5, 1990, and I am currently assigned to the Philadelphia Division, South Jersey Resident Agency, where I investigate, gather evidence and make arrests for violations of Title 18 of the United States Code and other federal criminal laws.

The Defendant

2. At all times relevant to this complaint, defendant ROBERT J. SUCARATO was a resident of New Jersey and was the owner and President of New York Financial Company ("NYFC") which purportedly was a capital management and financial consulting firm with offices in New York City and Chicago.

3. Defendant ROBERT J. SUCARATO established two hedge funds, the NYFC Strategic Fund and the NYFC Diversified Strategic Fund (the "Funds"), which purportedly invested in a variety of

security instruments, including commodities futures contracts and options on commodity futures.

The Commodity Futures Trading Commission

4. At all times relevant to this Complaint, the United States Commodity Futures Trading Commission ("CFTC") was an independent federal agency of the United States charged with administering and enforcing the provisions of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1 et seq., and the CFTC Regulations, 17 C.F.R. § 1.1 et seq. As part of its duties, the CFTC regulated transactions involving the trading of commodity futures contracts.

5. At all times relevant to this Complaint, a commodity pool operator ("CPO") was any person engaged in a business in the nature of an investment trust or similar form of enterprise and who solicited, accepted, or received funds from others for the purpose of trading in commodity futures contracts. 7 U.S.C. § 1a(5). Typically, the funds received from investors by a CPO were combined in commodity pools and used to trade in commodity futures contracts. Any person acting as a CPO was required to be registered with the CFTC or comply with the CPO exemption requirements under the CEA and the CFTC Regulations.

6. A representative of the CFTC has advised, in substance and in part, that defendant ROBERT J. SUCARATO and NYFC have never been registered with the CFTC as CPOs and have never

been exempt from being registered as CPOs in accordance with the CEA and the CFTC Regulations.

7. At all times relevant to this Complaint, CPOs were prohibited from using the mails or any other means of interstate commerce to (A) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or (B) engage in any transaction, practice, or course of business which operated as a fraud or deceit upon any client or participant or prospective client or participant. 7 U.S.C. § 6.0(1).

The Scheme to Defraud

8. From at least as early as in or about September, 2004 to on or about August 1, 2007, in Camden and Monmouth Counties, in the District of New Jersey and elsewhere, the defendant ROBERT J. SUCARATO knowingly and willfully devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, did as follows:

9. It was a part of the scheme and artifice that defendant ROBERT J. SUCARATO solicited individuals to invest in the Funds in person and through his website (www.nyfc.net) and in doing so:

(a) falsely claimed that he had managed the Funds

since 1993 with over \$7.2 billion in assets under management;¹

(b) falsely asserted that the Funds had achieved a ten-year compounded return exceeding 1800% and outperformed the market;²

(c) created a false audit report purportedly prepared by a major accounting firm which falsely indicated that NYFC had a net worth of approximately \$798 million;³

(d) misrepresented that NYFC was registered as an investment advisor and portfolio manager;⁴

(e) misrepresented his educational and

¹ On or about March 13, 2008, defendant ROBERT J. SUCARATO voluntarily provided a statement to Special Agents with the FBI. In substance and in part, SUCARATO admitted that NYFC never had \$7.2 billion in assets under management.

² Law enforcement officers determined, through the investigation, that the Funds had not been in existence for 10 years, and, as set forth below, experienced substantial losses.

³ A representative of the major accounting firm informed law enforcement officers, in substance and in part, that it had never performed an audit of NYFC, nor had it been engaged to do so. In addition, the accounting firm wrote a cease and desist letter to defendant ROBERT J. SUCARATO demanding that he remove the reference to the accounting firm, which SUCARATO ignored.

⁴ Representatives with the CFTC and the Securities and Exchange Commission ("SEC") have confirmed that NYFC was never registered with the SEC or any other regulator.

professional background;⁵

(f) falsely listed certain individuals as officers and managers of NYFC when in fact they were not;⁶ and

(g) otherwise created the false impression that NYFC was a successful, well-established and "leading capital management and financial consulting firm" with offices in New York and Chicago," with superior management and a staff of "over 20 experienced traders."

10. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO provided the investors with an Offering Memorandum (the "Offering Memorandum") which falsely claimed that NYFC was registered as an investment advisor and portfolio manager, and which falsely listed certain individuals as officers and directors of NYFC, each purporting to have impressive credentials.

11. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO established a "virtual office" in New York City which allowed SUCARATO to claim that NYFC had a

⁵ Defendant ROBERT J. SUCARATO claimed that he graduated *magna cum laude* from New York University ("NYU") with a Bachelor's Degree in Finance and Economics. A representative of NYU has informed law enforcement officers, in substance and in part, that NYU has no records of SUCARATO ever having enrolled in any of its classes or programs.

⁶ Law enforcement officers interviewed the listed individuals who disclaimed affiliation with NYFC as its officers or managers.

prestigious mailing address. In reality, this virtual office space was nothing more than rented, shared office space for a nominal fee which shared receptionists, conference rooms, and office areas with many other companies.

12. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO caused the investors to provide SUCARATO with checks which he deposited into bank accounts in the name of NYFC which SUCARATO controlled and caused the investors to wire their money into those bank accounts.

13. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO opened two individual accounts in his own name at Refco, LLC and Interactive Brokers, LLC - two Futures Commission Merchants ("FCMs") registered with the CFTC (the "Refco Account" and "Interactive Brokers Account," respectively). SUCARATO did not open or maintain any commodity futures or options accounts in the names of the Funds or NYFC at any of the FCMs registered with the CFTC.

14. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO deposited some of the investors' money into his two individual FCM accounts for purposes of trading commodities futures and options. Contrary to claims SUCARATO made to the investors, SUCARATO consistently experienced net losses trading commodity futures and options.

15. It was further part of the scheme and artifice

that defendant ROBERT J. SUCARATO provided investors with false account "statements" pertaining to the Funds in order to maintain the investors' confidence in their investment with NYFC. These statements falsely reported to the investors that their investments were growing in value due to SUCARATO's profitable trading.

16. It was further part of the scheme and artifice that defendant ROBERT J. SUCARATO diverted some of the investors' money used to invest in the Funds to his personal use.

17. As a result of the above-acts, defendant ROBERT J. SUCARATO caused the investors to provide SUCARATO with more than \$1.6 million.

Investor JH

18. JH informed law enforcement officers, in substance and in part, that her father passed away in May 2004, leaving JH with an annuity of approximately \$45,000. Defendant ROBERT J. SUCARATO had previously informed JH that he was a successful financial investor. JH therefore asked SUCARATO to invest a portion of JH's money with NYFC.

19. On or about September 4, 2004, defendant ROBERT J. SUCARATO caused JH to issue check number 102 in the amount of \$35,000 payable to NYFC from State Street Bank and Trust which SUCARATO caused to be deposited into NYFC's Citibank bank account number 95647850 (the "NYFC Citibank Account").

20. On or about September 13, 2004, defendant ROBERT J. SUCARATO transferred \$31,000 from the NYFC Citibank Account to his personal Citibank bank account number 49961793 (the "Sucarato Citibank Account 1"), consisting of JH's investment money.

21. On or about September 15, 2004, defendant ROBERT J. SUCARATO wire transferred \$25,000 to the Refco Account from the Sucarato Citibank Account 1. This was the first deposit into an FCM account, leaving a \$6,000 balance of JH's investment money in the Sucarato Citibank Account 1. A review of the Sucarato Citibank Account 1 records reveals that SUCARATO spent a portion of that \$6,000 on personal expenses at various retail merchants such as Macy's, Getty, or Wegmans, and at various recreational establishments.

22. During this time period, defendant ROBERT J. SUCARATO made various trades in the Refco Account and lost the majority of JH's investment.

23. Despite these losses, defendant ROBERT J. SUCARATO caused false account statements to be delivered to JH which purported to show that JH's investment was growing substantially.

24. On or about November 23, 2004, defendant ROBERT J. SUCARATO withdrew \$3,981.46, consisting of JH's investment money, from the Refco Account and wire transferred it back into the Sucarato Citibank Account 1. A review of the Sucarato Citibank Account 1 records reveals that SUCARATO then spent the money on

himself at various retail establishments including Macy's, Sunoco, Kinko's, Westin Hotels, Bridgeway Diner, Flat Iron Lounge, Broadway & 55th Lounge, and a parking garage. As of January 31, 2005, SUCARATO spent the money he claimed he was going to invest for JH down to approximately \$7.36.

25. JH informed law enforcement officers, in substance and in part, that in or around January or February 2005, JH decided to invest more money with defendant ROBERT J. SUCARATO after the Court finalized the probate of the estate of JH's father, from which JH received approximately \$90,000. JH explained that she did so based on the account statements JH had received from SUCARATO which purported to show substantial gain of JH's prior investment and SUCARATO's oral representation of how well JH's investment was growing.

26. On or about February 8, 2005, defendant ROBERT J. SUCARATO caused JH to wire transfer approximately \$76,000 from JH's bank account into the NYFC Citibank Account. SUCARATO then transferred \$73,000 of JH's \$76,000 investment to the Sucarato Citibank Account 1.

27. On or about February 9, 2005, defendant ROBERT J. SUCARATO wire transferred \$50,000 (of the \$73,000) from the Sucarato Citibank Account 1 to the Refco Account.

28. On or about February 10, 2005, defendant ROBERT J. SUCARATO wire transferred an additional \$14,000 from the Sucarato

Citibank Account 1 to the Refco Account - leaving a balance of approximately \$8,800 in the Sucarato Citibank Account 1. A review of the Sucarato Citibank Account 1 reveals that he then spent a portion of the remaining funds from JH's investment on personal expenses at various retail establishments, including Zales, Vermont Teddy Bear, and restaurants. As of April 11, 2005, SUCARATO had spent all but \$426.

29. On or about April 12, 2005, defendant ROBERT J. SUCARATO wire transferred \$2,500 from the Refco Account, consisting of JH's investment to the Sucarato Citibank Account 1. A review of the Sucarato Citibank Account 1 records reveals that SUCARATO made cash withdrawals from a portion of that money, spent a portion of the money to pay the rent for his virtual office in New York City, and spent a portion of the money on other personal expenses at retail establishments such as Shoprite and Panera Bread.

30. On or about May 6, 2005, defendant ROBERT J. SUCARATO wire transferred another \$2,000 from the Refco Account, consisting of JH's investment money, to the Sucarato Citibank Account 1. A review of the bank account records reveals that SUCARATO then spent that money for personal expenses at retail establishments such as Ruby Tuesday and Lobster Shanty.

31. On or about May 19, 2005, defendant ROBERT J. SUCARATO wire transferred an additional \$1,000 from the Refco

Account, consisting of JH's investment, to the Sucarato Citibank Account 1. A review of the bank records reveals that as of July 12, 2005, SUCARATO had overdrawn the Sucarato Citibank Account 1.

32. In addition, a review of the NYFC Citibank Account records reveals that defendant ROBERT J. SUCARATO also spent the remaining \$3,200 from JH's \$76,000 investment which was left in the NYFC Citibank Account. SUCARATO made cash withdrawals from those funds, paid rent for his virtual office, and spent it at various retail establishments including Hotels.com and Lowes.

33. In or around September 2005, defendant ROBERT J. SUCARATO caused an account statement to be emailed to JH which purported to show that JH's \$35,000 investment had grown to more than \$52,000, and JH's \$76,000 investment had grown to more than \$95,000.

Investor LE

34. LE informed law enforcement officers, in substance and in part, that she first met defendant ROBERT J. SUCARATO in 2002. SUCARATO told LE that he had a financial investment firm named NYFC which had two hedge funds. SUCARATO said that he could get a better rate of return for LE if she were to invest in NYFC's Funds. LE therefore decided to invest with SUCARATO.

35. On or about July 14, 2005, defendant ROBERT J. SUCARATO caused LE to wire transfer approximately \$53,460 from LE's JP Morgan Chase account to the NYFC Citibank Account.

36. The same day, instead of investing LE's money, defendant ROBERT J. SUCARATO transferred approximately \$49,000 of LE's \$53,460 from the NYFC Citibank Account to the Sucarato Citibank Account 1, leaving a balance of \$4,547 in the NYFC Citibank Account. A review of the NYFC Citibank Account records reveals that SUCARATO spent this remaining balance on personal expenses at retail establishments such as LL Bean, Texaco, TiVo, Holiday Inn, and WaWa.

37. Also on July 14, 2005, defendant ROBERT J. SUCARATO transferred \$44,000 of the \$49,000 to the Refco Account, leaving a balance of \$5,100 in the Sucarato Citibank Account 1. A review of the latter account reveals that SUCARATO spent the remaining \$5,100 of LE's investment money by making cash withdrawals and spending it at various retail establishments including Kohl's, Walmart, Hampton Inn, Jimmy's Seafood, Bed Bath & Beyond, Enterprise Rent - A- Car, and New Jersey EZ Pass. As of August 15, 2005, SUCARATO had spent the \$5,100 down to \$294.

38. On or about August 16, 2005, defendant ROBERT J. SUCARATO transferred approximately \$2,000 from the Refco Account, consisting of LE's investment, and deposited it into the Sucarato Citibank Account 1. SUCARATO then spent that money at various retail establishments, including Exxon, Sunoco, EZ Pass, US Golf, Hampton Inns, and Enterprise Rent - A - Car.

39. On or about August 25, 2005, defendant ROBERT J.

SUCARATO transferred approximately \$3,000 from the Refco Account, consisting of LE's investment, to the Sucarato Citibank Account 1. A review of the Sucarato Citibank Account 1 records reveals that SUCARATO spent that money on various personal expenses such that as of October 3, 2005, the account has a negative balance of \$500.

40. A review of the Refco Account records reveals that defendant ROBERT J. SUCARATO consistently lost money trading the portion of LE's investment money that SUCARATO did not spend on himself. Despite those losses, SUCARATO, on or about August 11, 2006, caused an email to be sent to LE which contained a link to access a Quarterly Account Statement of LE's account with NYFC. LE informed law enforcement officers, in substance and in part, that the account statement indicated that LE's \$53,460 investment in the NYFC Strategic Fund had purportedly grown to more than \$100,000.

Investors EG and MG

41. EG and MG informed law enforcement officers, in substance and in part, that in or around January 2006, defendant ROBERT J. SUCARATO proposed that EG and MG invest in NYFC's hedge funds. SUCARATO portrayed that the Funds would deliver approximately 40% returns annually.

42. EG and MG further informed law enforcement officers, in substance and in part, that defendant ROBERT J.

SUCARATO provided them with an investment performance chart which purported to show that an investment in the NYFC Strategic Fund had a 10-year average return of 34.5% and a 10-year compounded return of 1813.5%. SUCARATO also provided EG and MG with the Offering Memorandum and a letter from a major accounting firm which suggested that the firm had conducted an audit of NYFC (the "Accounting Firm Letter").⁷ In reliance on SUCARATO's representations, EG and MG decided to invest in NYFC.

43. On or about February 6, 2006, defendant ROBERT J. SUCARATO caused MG to wire transfer approximately \$450,000 from MG's Morgan Stanley brokerage account to the NYFC Citibank Account. That same day, defendant ROBERT J. SUCARATO transferred \$55,000 of MG's \$450,000 investment into the Sucarato Citibank Account 1. A review of the NYFC Citibank Account records reveals that at the time SUCARATO caused the wire transfer, that account had a balance of \$6.19.

44. On or about February 9, 2006, in response to MG's request, defendant ROBERT J. SUCARATO wire transferred approximately \$385,000 to MG's Commerce Bank bank account as a loan and wired an additional \$65,000 to MG's Commerce Bank bank account. Because SUCARATO did not have the \$65,000, he used a portion of Investor BE's investment money, as set forth below.

⁷ A representative of the accounting firm informed law enforcement officers, in substance and in part, that the Accounting Firm Letter was false.

45. On or about February 14, 2007, defendant ROBERT J. SUCARATO caused a Quarterly Statement to be sent to EG and MG by email. The statement purported to show that EG and MG's \$450,000 investment had grown to \$672,389.42.

46. On or about April 7, 2007, EG attempted to redeem the value of EG's account at NYFC. EG informed law enforcement officers, in substance and in part, that defendant ROBERT J. SUCARATO caused a check for \$750,000 to be sent to EG by Federal Express with instructions that EG return the overage back to SUCARATO. The check bounced.

Investor BE

47. BE informed law enforcement officers, in substance and in part, that she met defendant ROBERT J. SUCARATO through Investor LE. After learning through LE of how well LE's investment with SUCARATO purportedly was doing, BE reviewed the NYFC website which caused BE to feel more confident in making an investment.

48. On or about April 5, 2006, defendant ROBERT J. SUCARATO caused BE to wire transfer approximately \$225,165.49 from BE's A.G. Edwards account to the NYFC Citibank Account.

49. The next day, defendant ROBERT J. SUCARATO transferred \$195,000 of BE's investment money from the NYFC Citibank Account to the Sucarato Citibank Account 1. SUCARATO then transferred approximately \$50,000 from the NYFC Citibank

Account and approximately \$120,000 from the Sucarato Citibank Account 1, consisting of BE's investment money, to the Refco Account.

50. On or about April 6, 2006, defendant ROBERT J. SUCARATO wire transferred approximately \$25,000, consisting of BE's investment money, from the NYFC Citibank Account to JH. SUCARATO falsely claimed to JH that this was a portion of the return on JH's investment. Based on my education, training, and experience, this transfer of money was designed to keep the scheme going by duping JH into believing that her "investment" was sound.

51. On or about April 17, 2006, defendant ROBERT J. SUCARATO transferred \$65,000 of BE's investment money from the Refco Account to the Sucarato Citibank Account 1. That same day, SUCARATO transferred \$65,000 from the Sucarato Citibank Account 1 to the NYFC Citibank Account. SUCARATO then transferred \$65,000 from the NYFC Citibank Account to MG's Commerce Bank account.

52. Despite the above-referenced transfer of BE's investment money to MG, defendant ROBERT J. SUCARATO caused a Quarterly Account statement to be sent to BE which stated that as of June 30, 2006 - approximately seven weeks after BE made the \$225,000 investment - BE's account with NYFC had grown more than \$20,000.

53. In or about July 2007, defendant ROBERT J.

SUCARATO caused a Quarterly Account Statement to be delivered to BE which showed that BE's \$225,000 investment had purportedly grown to \$361,566.16.

54. BE informed law enforcement officers, in substance and in part, that she sought a partial redemption of her investment in August 2007 and received approximately \$30,000. BE made a similar redemption request for \$180,000 in January 2008. To date, defendant ROBERT J. SUCARATO has failed to redeem BE's Account.

Investor RL

55. RL informed law enforcement officers, in substance and in part, that Investor EG introduced RL to defendant ROBERT J. SUCARATO in 2005. During initial discussions with RL, SUCARATO said he was a hedge fund manager, and that his hedge funds were returning approximately 40% per year. SUCARATO also said his hedge funds had over \$4 billion under management at that time.

56. RL further advised, in substance and in part, that initially, defendant ROBERT J. SUCARATO expressed an interest in making a substantial investment in a real estate venture in which RL was involved. Between May and October 2006, SUCARATO approached RL about investing in the Funds. RL explained to SUCARATO that he was the trustee of a profit sharing plan for a business that RL ran. SUCARATO gave RL a performance chart which

purported to show the substantial growth of an investment in the NYFC Strategic Fund, the Accounting Firm Letter, and the Offering Memorandum. In reliance on SUCARATO's oral representations and the documents SUCARATO provided, RL decided to invest \$600,000 in NYFC from the profit sharing plan.

57. On or about October 10, 2006, defendant ROBERT J. SUCARATO caused RL to wire transfer \$600,000 from Santa Barbara Bank & Trust to the NYFC Citibank Account.

58. The very next day, defendant ROBERT J. SUCARATO used a portion of the funds received from RL, specifically, \$20,000, to pay rent for his primary residence, a townhouse located at 134 Beaver Brook Court, Holmdel, New Jersey by wiring that amount of money from the NYFC Citibank Account. In addition, SUCARATO wire transferred \$5,000 of RL's investment money to Jersey Unlimited Moving. A review of those bank records reveals that prior to receiving RL's \$600,000 "investment," the NYFC Citibank Account only had approximately \$154 in it.

59. On or about October 27, 2006, defendant ROBERT J. SUCARATO wire transferred \$455,000 from the NYFC Citibank Account to a newly opened, personal account at Citibank, account number 9969802323 (the "Sucarato Citibank Account 2"). The same day, defendant ROBERT J. SUCARATO then transferred \$450,000 from Sucarato Citibank Account 2 to the Interactive Brokers Account, leaving a \$5,000 balance in the personal account. A review of

the Sucarato Citibank Account 2 records reveals that SUCARATO spent RL's investment money on personal expenses at retail establishments such as Geico Insurance, Sprint, and Modell's. In addition, a review of the NYFC Citibank Account records reveals that defendant ROBERT J. SUCARATO also spent RL's investment money on personal expenses at various retail establishments such as Nautilus, Boxflex, Ring Central, and rent for his virtual office.

60. RL advised law enforcement officers, in substance and in part, that in or about January 2007, RL made a demand upon defendant ROBERT J. SUCARATO for an accounting of RL's investment in the NYFC Strategic Fund. In response to this request, SUCARATO sent RL an account statement by email on February 13, 2007. The account statement purported to show that RL's account balance had risen by more than \$73,000 from October 2006 to December 2006.

61. RL also advised law enforcement officers, in substance and in part, that RL made a demand for full redemption of RL's investment with NYFC on April 1, 2007. To date, RL has received back none of the \$600,00 investment made with defendant ROBERT J. SUCARATO.

Investor MH

62. MH informed law enforcement officers, in substance and in part, that MH became acquainted with defendant ROBERT J.

SUCARATO in 2006 through an introduction by MH's employer who was then in negotiations with SUCARATO for a very large investment in MH's employer. In initial discussions, defendant ROBERT J. SUCARATO represented to MH that NYFC was the hedge fund manager of two hedge funds owned by it, and that the hedge funds were returning approximately 40% per year. SUCARATO also claimed his hedge funds had over \$4 billion under management at that time.

63. ML further informed law enforcement officers, in substance and in part, that defendant ROBERT J. SUCARATO gave MH a performance chart which purported to show the NYFC Strategic Fund's superior performance over the past 10 years, the Accounting Firm Letter, and the Offering Memorandum. Based on the representations defendant ROBERT J. SUCARATO had made to MH's employer and the favorable impression SUCARATO had made on MH's employer and other investors in MH's employer, MH decided to roll over MH's IRA account into the Funds.

64. On or about December 10, 2006, defendant ROBERT J. SUCARATO caused MH to issue check number 6533706 in the amount of \$209,720.55 payable to NYFC which SUCARATO deposited into the NYFC Citibank Account on December 22, 2006. SUCARATO then transferred \$50,000 of MH's investment from the NYFC Citibank Account to the Sucarato Citibank Account 2. A review of the Sucarato Citibank Account 2 records has revealed that defendant ROBERT J. SUCARATO used a portion of MH's investment money on

personal expenses at retail establishments such as Geico Insurance.

65. MH informed law enforcement officers, in substance and in part, that on or about April 4, 2007, MH made a demand for redemption. Defendant ROBERT J. SUCARATO acknowledged the demand but told MH that MH was not eligible for a redemption. SUCARATO offered that if MH would sign a promissory note collateralized by MH's investment account, SUCARATO would loan MH \$224,686 which would be repaid by the redemption when it occurred in June 2007. SUCARATO drew up the Note and MH signed it on April 20, 2007. SUCARATO then delivered MH a check for \$224,686. That check was dishonored by Citibank on April 24, 2007.

66. MH further advised law enforcement officers, in substance and in part, that between the end of April and August 2007, MH met with defendant ROBERT J. SUCARATO numerous times in New York and New Jersey for the purpose of having SUCARATO make good on the bad check. During that time period, SUCARATO delivered a check for \$225,000 to MH. MH learned from Citibank that the account on which the \$225,000 check had been drawn had been closed some time before the check was drawn.